IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 874 of 2007

***Date of decision*: *December 20, 2007*.**

Lal Chand **…..Petitioner- accused.**

Vs.

State of H.P. **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?*[1] *No

For the petitioner : Mr Anup Chitkara, Advocate.

For the Respondent : Mr M.L.Chauhan, Addl.A.G.

Kuldip Singh, Judge (Oral).

This is an application under Section 439 Cr.P.C., for releasing the petitioner on bail in F.I.R. No.276 of 2007, dated 20.9.2007, registered at Police Station, Manali, under Sections 376, 323, 506 IPC. The notice was issued on 4.12.2007 and the learned Additional Advocate General has submitted the status report.

2. Heard and perused the record.

3. The learned counsel for the petitioner has submitted that prosecution case against the petitioner is highly improbable. The prosecution story itself is full of doubts and raises grave suspicion regarding the whole case. The petitioner was arrested on 21.9.2007. There is no likelihood of petitioner in any manner tampering with the prosecution evidence or influencing the prosecution witnesses. The petitioner earlier filed bail application, which has been rejected by the

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

learned Additional Sessions Judge, Fast Track, Kullu on 19.11.2007. The learned Additional Advocate General has opposed the bail application. He has submitted that the petitioner raped the prosecutrix by giving threats. She could free herself from the clutches of the petitioner and thereafter disclosed the facts to her husband and then she and her husband reported the matter to the police and case was registered.

4. The prosecution case in brief is that statement of the prosecutrix, under Section 154 Cr.P.C. was recorded on 20.9.2007 at about 5.30 p.m. wherein she has stated that on 17.9.2007 she had gone in a maruti van up to Dhobi for bringing medicines for her child. At about 10 a.m., she went to Dhobi Khud to answer the call of the nature, in the meantime, petitioner came there and caught hold her, she objected, cried, but the petitioner gagged her mouth and threatened her that he would kill her and throw her body. He also gave 3-4 slaps to her. She cried twice –thrice, but nobody heard her cries as it was an isolated place. The petitioner took her under a rock and without her consent raped her. He kept her during day as well as night and had forcible sexual intercourse with her five-six times. On 18.9.2007, she freed herself from the clutches of the petitioner and came to her house and narrated whole story to her husband. On 19.9.2007, her husband went out to trace the petitioner, but he was not traceable. On these facts, the police registered the case. The prosecutrix as well as the petitioner have been medically examined, broken bangles of the prosecutrix were recovered from the spot. The challan has also been filed in the court.

5. The learned counsel for the petitioner has submitted that even as per the case of the prosecution, no case of rape is made out against the petitioner and in these circumstances, the petitioner is entitled to bail. The prosecutrix has named the petitioner for forcible sexual intercourse with her, her broken bangles were recovered from the spot, which is an isolated place. The prosecutrix has specifically stated that she was raped five-six times against her wish by the petitioner. The prosecutrix after freeing herself from the petitioner, immediately narrated the whole story to her husband of her own. As stated above, the challan against the petitioner has already been filed in the court, therefore, it will be seen on the basis of the evidence to be led by the prosecution, whether offence under Section 376 IPC, is made out or not. During investigation, It has come on record that earlier also the petitioner was convicted by the learned Judicial Magistrate Ist Class, Kullu, under Section 324 IPC on 6.11.2004. At this stage, on the basis of material on record, the petitioner is not entitled to bail. Hence, the application is rejected.

6. Any observation made here-in-above shall not be construed as an expression of opinion on the merits of the case.

December 20, 2007. ***(Kuldip Singh)***
(Hem) ***Judge.***